

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUIS VAZQUEZ-ESCOBAR,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	FILE NO. 1:10-CV-2185-TWT
vs.	:	
	:	
GABLES RESIDENTIAL	:	
SERVICES, INC. d/b/a	:	[From Fulton County State
ALDERWOOD AT THE LAKE	:	Court; Civil Action File
APARTMENTS; and JASMINE AT	:	No. 10EV010298C]
THE LAKE, LLC d/b/a	:	
ALDERWOOD AT THE LAKE	:	
APARTMENTS,	:	
	:	
Defendants.	:	
	:	

**NOTICE THAT A NON-PARTY WAS WHOLLY OR PARTIALLY AT
FAULT**

COMES NOW Defendants Gables Residential Services, Inc. (improperly identified as Gables Residential Services, Inc. d/b/a Alderwood at the Lake Apartments), and Jasmine at the Lake, LLC d/b/a Alderwood at the Lake (“Defendants”), and pursuant to O.C.G.A. § 51-12-33(d), hereby gives notice that a non-party was wholly or partially at fault by filing and serving the opposite party or parties with this pleading, showing as follows:

1.

This is a diversity action, and jurisdiction in the United States District Court for the Northern District of Georgia, Atlanta Division is proper pursuant to 28 U.S.C. § 1332.

2.

Federal Courts are bound by state substantive law, and the Federal Rules of Civil Procedure apply only where there is conflicting state procedure. Baird v. Celis, 41. F. Supp. 2d 1358, 1358-1360 (N.D. Ga. 1999).

3.

O.C.G.A. § 51-12-33 is substantive law of the state of Georgia that does not conflict with the Federal Rules of Civil Procedure, and therefore, O.C.G.A. § 51-12-33 is applicable to this matter.

4.

In relevant part, O.C.G.A. § 51-12-33 states,

(d)(1) Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.

(2) The notice shall be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.

5.

O.C.G.A. § 51-12-33 requires damages to be apportioned among persons who are liable according to the percentage of fault of each person. Cavilier Convenience, Inc. v. Sarvis, Nos. A10A0538, A10A0539, WL 2698381, at *2-*3 (Ga. App. July 9, 2010).

6.

Accordingly, Defendants hereby identify John Doe Assailant as a non-party who was wholly or partially at fault. John Doe Assailant is the person who allegedly stabbed or cut Plaintiff in the early morning hours of Monday, October 19, 2009. John Doe Assailant is the best identification that is possible for this non-party under the circumstances. John Doe Assailant's last known address is unknown.

7.

A brief statement of the basis for believing the non-party to be at fault is as follows: Plaintiff alleges that he was attacked and stabbed on October 19, 2009 at Alderwood at the Lake Apartments, which was owned by Defendant Jasmine at the Lake, LLC and managed by Gables Residential Services, Inc. Plaintiff further alleges that Defendants were negligent in maintaining, inspecting, securing, patrolling, and managing the premises. Finally, Plaintiff contends that he is entitled to special and general damages for the alleged personal injuries, punitive damages, and attorney's fees. Defendants show that John Doe Assailant is wholly or partially at fault to Plaintiff because he committed the alleged stabbing proximately causing Plaintiff's alleged injuries and damages.

8.

This Notice of that a non-party was wholly or partially at fault is hereby filed at least 120 days prior to the date of the trial of this action for the purposes of having the jury in the trial of this case consider and apportion the negligence, intentional actions, and/or fault of John Doe Assailant.

8.

Pursuant to this Notice, negligence, intentional actions, and/or fault of John Doe Assailant shall be considered by the trier of fact in assessing percentages of fault of all persons or entities who contributed to the Plaintiff's Injury or damages,

regardless of whether the person or entity was, or could have been named as a party to this lawsuit. See, O.C.G.A. §§ 51-12-33(c)-(d).

Respectfully submitted this 1st day of October, 2010.

/s/ W. Jason Pettus

Matthew G. Moffett

State Bar No.: 515323

W. Jason Pettus

State Bar No.: 140852

Attorneys for Defendants Gables Residential
Services, Inc and Jasmine at the Lake, LLC

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THE LAKE, LLC d/b/a	:	
ALDERWOOD AT THE LAKE	:	
APARTMENTS,	:	
	:	
Defendants.	:	
_____	:	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the **DEFENDANTS**
GABLES RESIDENTIAL SERVICES, INC. and JASMINE AT THE LAKE,
LLC'S NOTICE THAT A NON-PARTY WAS WHOLLY OR PARTIALLY
AT FAULT upon all counsel of record by depositing same in the United States
mail in a properly addressed envelope with adequate postage thereon to:

James A. Rice, Jr., Esq.
JAMES A RICE, JR., P.C.
563 Spring Street, NW
Atlanta, Georgia 30308

This the 1st day of October, 2010.

/s/ W. Jason Pettus

Matthew G. Moffett

State Bar No.: 515323

W. Jason Pettus

State Bar No.: 500769

Attorneys for Defendants Gables Residential
Services, Inc. and Jasmine at the Lake, LLC

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